to the payment of the secured debts, being no warrant for the payment of an unsecured debt, but the application of the proceeds should be disturbed only to the extent necessary to protect the secured debts.

2. Same—Creditor Not Estopped.—Decedent, after conveying land by deed of assignment to secure debts, including one to defendants and others to complainants, sold the land; the proceeds thereof being applied to the payment of an unsecured claim due defendants. Complainant sued to correct the application; the case being referred to a commissioner. Defendants' exception to his report recited that he decided the proceeds should not have been applied to defendants' unsecured claim, and applied them to their secured claim, and that he suggested that the unsecured debt was barred by limitation, and the exception recited that one of the creditors who had a secured debt conceded the correctness of the exception. Held, that the creditor's concession did not commit him to the correctness of the application of the proceeds to defendants' unsecured debt.

ARMISTEAD *v.* KIRBY et al.

March 14, 1907.

[56 S. E. 570.]

1. Mortgages—Trust Deed—Foreclosure—Deceased Beneficiary.—Where complainant executed a trust deed, conveying certain land to secure payment to K., her heirs and assigns, of a specified sum, there could be no lawful sale under the deed after K.'s death until there had been an administrator appointed for K.'s estate.

2. Same—Actual Notice.—Where a creditor secured by a deed of trust died, leaving no unsatisfied debts, and a sole distributee, and it was agreed between the debtor and such distributee that the trustee might proceed to sell property for payment of the debt, such sale could not properly be made without actual notice to the debtor.

McCURDY *v.* O'ROURKE.

March 14, 1907.

[56 S. E. 573.]

Wills—Construction.—Testator devised to one son certain property for life, remainder to his children, if any, the property to otherwise pass to a trustee in trust for testator's second son, upon the trusts declared in the next item of the will, which item devised certain other property to the trustee, the latter out of the rents to pay to said second son $600 per year while unmarried, or, if married, $1,200 per year for the balance of his life. The surplus, if any, above such sums was to be invested; the principal and interest with the real

estate to pass to the children, if any, of such second son. In case of his decease without children, the trust estate was to pass to the first son for life, remainder to his children, and, in case both sons died without issue, the whole estate was to pass to certain nephews of testator. The will further provided that the second son should have no power to sell, incumber, or anticipate the payment of his annuity. Held that, on the death of the first son without issue, the real estate devised to him for life passed to the trustee and became part of the trust, subject to be administered upon precisely the same trusts, and hence the annuity to the second son was not increased.

WILCOX *v.* WILCOX.

March 14, 1907.

[53 S. E. 588.]

1. Executors and Administrators—Payment of Annuity—Demand—Laches.—Where testator's daughter made demand upon the executor within a reasonable time for the payment of an annuity due under the will, which was probated in 1878, and he declined payment, assuring her that a delay in settling the estate was not only unavoidable, but beneficial to all parties interested, her claim was not barred by laches because she took no legal steps to collect it until 1905; the estate having been in the meantime under the control of the court, and the available property not more than enough to pay the estate's debts.

2. Wills—Annuity—Construction.—Testator provided for the sale of his residuary real estate within five years, and directed the payment of an annuity to a daughter until such sale and the division of the proceeds between her and his other children. Held, that he intended to limit the period during which the annuity should be paid to five years.

3. Same—Interest—Delinquent Annuities.—Interest is properly allowed on an annuity in arrears payable under a will.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 49, Wills, § 1847.]

4. Same—Construction—Charge of Annuity on Estate.—A will loaned certain property to the widow until her remarriage or death, provided for the sale of the residue, the proceeds of which, after the payment of debts and annuities to a daughter, were to be divided between his children, provided for the payment of the annuity until a division of the proceeds of the residuary estate, and provided that the property held by the wife should be distributed among the children upon her remarriage or death. Held, that testator intended to charge all his estate, other than that loaned to his wife, with the